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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,365	05/04/2001	Vincent De La forcade	2365-27	8183

7590 11/04/2004

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EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/787,365	Applicant(s) DE LA FORCADE, VINCENT	
	Examiner LIEN TM NGO	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-43 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-43 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/29/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 25-43 and 45-48 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. For example: A liquid containment element adapted to retain liquid in the container axially distant from the orifice as long as the cap is engaged to the nozzle (in claims 25, 26 and 45-48).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26, 28, 30, 32, 34, 36, 38 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Mennesson (Fr. 2,607,786).

In regard to claims 26, 28, and 46, Mennesson discloses, in figs. 1 and 2, a device is capable of storing liquid, which comprising a container and a removable cap 2. The container comprises a nozzle having an outer portion containing a gripping portion (screw thread). The cap comprises a sidewall with an inner surface

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containing gripping portion to engage the nozzle gripping portion, and an upper wall 1. The cap further comprising a containment element 6 which is capable to retain liquid in the container axially distant from the container orifice as long as the gripping portion of the cap is engaged to the nozzle (see fig. 3).

In regard to claims 30, 32, 34, 36 and 38, the cap further comprises a communication element 3 having a duct capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 2). The communication element comprises 4 tabs separated by slots 5.

3. Claims 25-29, 31, 43, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Baugh (3,592,349).

In regard to claims 25-28, 43, 46, Baugh discloses, in figs. 1-3, and 6, a device is capable of storing liquid comprising a container 10 and a removable cap 17.

The container comprises a nozzle 14 having an outer portion containing a gripping portion 14. The cap comprises a sidewall with an inner surface containing gripping portion 26 to engage the nozzle gripping portion, and an upper wall 18 closing the upper end of the cap side wall. The cap comprise a stopper element 21 and a pressure equalizing element 19 which equalizes pressure inside the container and outside the container when the cap is partially gripping the nozzle (see fig. 2). The cap further comprising a containment element 22 which is capable to retain liquid in the container axially distant from the container orifice as long as the cap is engaged to the nozzle (see fig.2).

In regard to claims 29 and 31, the cap further comprises a communication element having a duct (the passage between the stopper element 21) capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 2).

4. Claims 25-43, 45-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Dyke (4,304,869). Dyke discloses, in figs. 1-5, a device is capable of storing liquid comprising a container and a removable cap 2. The container comprises a nozzle having an outer portion containing a gripping portion 22. The cap comprises a sidewall with an inner surface containing gripping portion 38, 39 to engage the nozzle gripping portion, an upper wall 26. The cap further comprises a communication element 24 having a duct capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 4). The communication element comprises 3 tabs separated by slots. The cap is a stopper element and a pressure equalizing element which equalizes pressure inside the container and outside the container when the cap is partially gripping the nozzle (see fig. 4). The stopper element is may be capable of being a liquid containment element adapted to retain liquid in the container axially distant from the container orifice as long as the cap is engaged to the nozzle. The topper element comprises a tube with a length longer that of the cap, arranged inside the cap and opening at one end near the orifice of the nozzle when the cap is engaged to the nozzle.

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5. Claims 26, 28 and 46 rejected under 35 U.S.C. 102(b) as being anticipated by Victor et al. (4,057,160) or Watson et al. (3,944,1041). Victor et al. (fig. 2) or Watson et al. (fig. 3) disclose a storage device comprising a container having a gripping portion; a cap comprising a gripping portion to engage the container gripping portion, a stopper element and a liquid containment element adapted to retain liquid in the container axial from an orifice as long as the gripping portion of the cap is engaged on to the nozzle.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mennesson. Although Mennesson is silent as to disclose a length of the tabs either approximately equal or longer to the nozzle length, it would have been an obvious matter of design choice to make the length of the tabs in Mennesson device as claimed, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

8. Claims 33, 35, 37, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baugh in view of Mennesson.

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In regard to claim 33, 35 and 37, Baugh does not disclose the stopper element comprising tabs and slots.

Mennesson teaches a stopper element comprising tabs and slots.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Baugh stopper element with tabs and slots, as taught by Mennesson, in order to provide a flexibility for the end of the stopper when insert to the container.

9. In regard to claim 39 and 41, Baugh in view of Mennesson does not disclose a length of the tabs either approximately equal or longer to the nozzle length, it would have been an obvious matter of design choice to make the length of the tabs in Baugh in view of Mennesson device as claimed, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Response to Arguments

10. Applicant's arguments with respect to claims 25-43 and 45-48 have been considered but are moot in view of the new ground(s) of rejection as introducing new matter.

11. In response to applicant's argument, Mennesson does disclose a pressure equalizing element which equalizes pressure between inside and outside when the gripping portion of the cap is partially engaged with the gripping portion of the nozzle,

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but the pressure equalizing element is not required in the claims 26, 28, 30, 32, 34, 36, 38 and 46.

In response to applicant's argument, Baugh teach a cap having upper wall provided with an opening, but the upper wall of the cap without opening is not required in the claims.

12. In response to applicant's argument, Dyke does not disclose a liquid containment element adapted to retain liquid in the container axially distant from an orifice as long as a gripping portion of the cap is engage onto the nozzle, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

13. Applicant's arguments with respect to claims 26, 28 and 46 as 102 rejection over Aichinger (3,987,921 or 4,253,581) have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

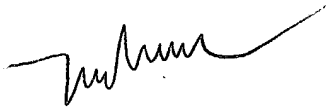
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lien Ngo

November 2, 2004

A handwritten signature in black ink, appearing to be "Lien Ngo", written in a cursive style.